STATE OF MICHIGAN

COURT OF APPEALS

SOUTH MACOMB DISPOSAL AUTHORITY, Plaintiff-Appellant,	UNPUBLISHED October 17, 2006
v	No. 262914 Macomb Circuit Court
DEPARTMENT OF ENVIRONMENTAL QUALITY, Defendant-Appellee.	LC No. 04-004406-CZ

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

PER CURIAM.

South Macomb Disposal Authority (SMDA) appeals by leave granted an order denying relief on appeal in this dispute over reimbursement of grant monies for environmental cleanup. Because the trial court did not err in interpreting the plain and ordinary meaning of variable A defined in MCL 324.20109a(9)(b) for purposes of calculating SMDA's repayment obligation, we affirm in part. However, because the trial court did not decide whether prejudgment interest is included within the statutory definition regarding variable B of the repayment formula, we vacate in part and remand. We affirm in part, vacate in part, and remand.

SMDA received grants from defendant, Department of Environmental Quality (DEQ), under the municipal landfill cost-share grant program (MLCSGP), MCL 324.20109a. SMDA used the grants to remediate contamination at landfills known as sites 9 and 9A. The MLCSGP requires that if a grant recipient receives funds from another source to compensate for response costs, the grant recipient must (1) notify DEQ, and (2) repay the grant funds according to a statutory formula. MCL 324.20109a(9). SMDA received money from other sources in the form of settlements in litigation over insurance coverage for the contamination at sites 9 and 9A. SMDA notified DEQ of the receipt of these funds. DEQ calculated SMDA's repayment obligation, and determined that SMDA was required to repay all of the grant monies. SMDA appealed this determination in the trial court. The trial court upheld DEQ's decision, and SMDA appeals as of right.

SMDA first argues that this Court should reverse the trial court's decision affirming DEQ's decision because it violates settled principles of statutory construction. This Court's review of a lower court's disposition of an appeal arising from an agency's determination is limited to clear error. *Bureau of Worker's & Unemployment Compensation v Detroit Medical Ctr*, 267 Mich App 500, 504; 705 NW2d 524 (2005). This Court will overturn a circuit court's

disposition of an administrative appeal "only if we are left with the definite and firm conviction that a mistake has been made." *Id*. This Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Id*. at 503-504 (internal quotation marks and citation omitted). However, this Court reviews de novo questions of statutory interpretation. *Id*. at 504. Although this Court affords deference to an agency's longstanding interpretation of a statute, it will not give deference where the determination is clearly wrong. *Dana v American Youth Foundation*, 257 Mich App 208, 215; 668 NW2d 174 (2003).

"Well established principles guide this Court's statutory construction efforts. We begin our analysis by consulting the specific statutory language at issue." *Bloomfield Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002) (citation omitted). This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. *Willett v Waterford Twp*, 271 Mich App 38, 48; 718 NW2d 316 (2006) (citation omitted). Where the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written. *Ayar v Foodland Distributors*, 472 Mich 713, 716; 698 NW2d 875 (2005). This Court does not interpret a statute in a way that renders any statutory language surplusage or nugatory. *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

MCL 324.20109a(9)(a) requires a grant recipient to notify DEQ "if it receives money or any other form of compensation from any other source to pay for or compensate for any of the response activity costs for which it is liable." In the event a grant recipient receives money or compensation from any other source, MCL 324.20109a(9)(b) requires the grant recipient to repay DEQ, based on a specified formula, and in an amount not exceeding the grant amount. MCL 324.20109a(9)(b) provides, in pertinent part:

> (b) *If the recipient receives money or compensation from any other source . . . the recipient shall repay the department* an amount of money not to exceed the grant amount based on the following formula:
>
> (A minus B) multiplied by (C divided by D)
>
> with A, B, C, and D defined as follows:
>
> *A = The total amount of money received from the other source or dollar value of the compensation*.
>
> B = All reasonable costs incurred by the recipient to obtain the money or compensation.
>
> C = The total amount of grant funds received.
>
> D = The total amount of response activity costs that the applicant has or will incur . . . . [Emphasis added.]

The statutory definition of variable A is not ambiguous. Variable A includes "[t]he *total* amount of money received from the other source . . . ." MCL 324.20109a(9)(b) (emphasis

added). Where a statute does not define its terms, this Court references dictionary definitions. *Willett, supra* at 51. "Total" means "constituting or comprising the whole; entire . . . ." *Random House Webster's College Dictionary* (1997), p 1359. Therefore, the whole or the entirety of the "money received from the other source" must be included in variable A. MCL 324.20109a(9)(b).

Variable A's definition ("the total amount of money received from the other source . . .") is not limited to those monies received from the other source which are for eligible response costs. MCL 324.20109a(9)(b). SMDA's interpretation of MCL 324.20109a(9)(b)'s definition of variable A would change the definition to add this language. But this Court must enforce the statute as written. *Ayar, supra* at 716. Because the plain and ordinary meaning of MCL 324.20109a(9)(b) is that variable A includes "[t]he *total* amount of money received from the other source . . ." (emphasis added), the trial court did not commit clear error in affirming DEQ's interpretation of the statute for purposes of calculating SMDA's repayment obligation.

SMDA next argues that this Court should reverse the trial court's decision because if prejudgment interest is included in variable A, it should also be included in variable B of the repayment formula. The trial court never addressed this issue. Appellate review is normally circumscribed to issues decided by the lower court. *Candelaria v B C Gen Contractors Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999). We decline to address this issue, and remand to the trial court to do so. The trial court is comparatively better able to distinguish between "all reasonable costs incurred by the recipient to obtain the money"[1] recovered, and the recovery itself, since it was the circuit court that decided the insurance coverage cases from which SMDA obtained the "money received from the other source." MCL 324.20109a(9)(b). The trial court can also first determine what costs were reasonable--a fact related inquiry.

We affirm the trial court's decision upholding DEQ's inclusion in variable A of all the funds received by SMDA from the other source. With respect to variable B, we vacate the trial court's opinion and order and remand to the trial court for consideration of whether variable B must include prejudgment interest awarded to SMDA in the insurance coverage litigation.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Patrick M. Meter
/s/ Pat M. Donofrio

[1] MCL 324.20109a(9)(b).